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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WALTER ANGELO HARRELL,

Defendant and Appellant.

E061491

(Super.Ct.No. FSB1301977)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lorenzo R.

Balderrama and R. Glenn Yabuno, Judges. Affirmed.

Esther K. Hong, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Walter Angelo Harrell was charged by first amended information with committing a lewd act upon a child (Pen. Code,¹ § 288, subd. (c)(1), count 1), battery (§ 242, count 2), annoying or molesting a child under 18 when he had a prior sex crime conviction (§ 647.6, subd. (c)(2), count 3), and failure to register (§ 290, subd. (b), count 4). It was also alleged that he had three prior strike convictions. (§§ 1170.12, subds. (a)-(d) & 667, subds. (b)-(i).) Pursuant to a plea agreement, defendant pled guilty to count 4 and admitted one prior strike conviction. The trial court struck the remaining counts and allegations. On October 29, 2013, in accordance with the plea agreement, the court sentenced him to four years in state prison and awarded 342 days of presentence custody credits. On April 17, 2014, defendant filed a request for modification of sentence. The court held an ex parte hearing on the request for modification and denied the request. On May 20, 2014, defendant filed a motion for modification of sentence/*Romero*² motion. The court held an ex parte hearing and denied this motion.

Defendant filed a timely notice of appeal and requested a certificate of probable cause, which the court granted. We affirm.

PROCEDURAL BACKGROUND

Defendant was charged with and admitted that, on or about May 12, 2013, he committed the crime of failing to register, a felony. (§ 290, subd. (b).)

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and a few potential arguable issues: (1) whether defendant may raise any issues regarding his original plea, sentence, or denial of his first request for modification of sentence; and (2) whether he may raise any issues regarding the denial of his motion for modification of sentence/*Romero* hearing. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has done. In a handwritten letter, defendant requests this court to grant him a *Romero* hearing and find that his trial counsel was ineffective for not requesting that he have a *Romero* hearing or informing him of his right to ask for a *Romero* hearing under section 1385. He asserts that he never would have accepted a plea deal if he had known of his right to request a *Romero* hearing before sentencing. Defendant has failed to establish ineffective assistance of counsel (IAC).

““To establish ineffective assistance of counsel under either the federal or state guarantee, a defendant must show that counsel’s representation fell below an objective standard of reasonableness under prevailing professional norms, and that counsel’s deficient performance was prejudicial, i.e., that a reasonable probability exists that, but for counsel’s failings, the result would have been more favorable to the defendant. [Citations.]’ [Citation.]” (*In re Roberts* (2003) 29 Cal.4th 726, 744-745.) “A

‘reasonable probability’ is one that is enough to undermine confidence in the outcome. [Citations.]” (*People v. Dennis* (1998) 17 Cal.4th 468, 541.) Hence, an IAC claim has two components: deficient performance and prejudice. (*People v. Williams* (1997) 16 Cal.4th 153, 214-215.) “If a claim of ineffective assistance of counsel can be determined on the ground of lack of prejudice, a court need not decide whether counsel’s performance was deficient. [Citations.]” (*In re Crew* (2011) 52 Cal.4th 126, 150 (*Crew*).)

Here, defendant has not shown that, but for his counsel’s alleged failure to inform him of his right to request a *Romero* hearing, or his counsel’s failure to request a *Romero* hearing, the result would have been more favorable. Under section 1385, subdivision (a), the trial court has discretion to strike a prior felony conviction allegation in furtherance of justice. (*Romero, supra*, 13 Cal.4th at pp. 529-530.) However, “[a] defendant has no right to make a motion, and the trial court has no obligation to make a ruling, under section 1385. But he or she does have the right to ‘invite the court to exercise its power by an application to strike a count or allegation of an accusatory pleading, and the court must consider evidence offered by the defendant in support of his assertion that the dismissal would be in furtherance of justice.’ [Citation.]” (*People v. Carmony* (2004) 33 Cal.4th 367, 375.) Defendant has not shown that his counsel erred, since a defendant has no right to move for a *Romero* hearing. (*Ibid.*) Furthermore, he has not shown that, if he or his counsel would have invited the court to exercise its discretion to strike one of his strike convictions, the court would have done so. Moreover, even if the court had struck one of his prior strike convictions, defendant has not shown that he would have ended up

defendant's IAC claim fails. (See *Crew, supra*, 52 Cal.4th at p. 150.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

KING
J.